

CASE NOTE: DENMARK**CASE CITATION:**
U.2000.1853V**NAME AND LEVEL OF COURT:**
Danish Western High Court
(Vestre Landsret)**DATE OF DECISION:**
12 May 2000

At a restaurant (N) with late night opening hours, A authorized two Dankort card payments, as he swiped his debit card through one of N's card terminals, entered his PIN and agreed the amount that appeared on the display. The High Court found that the starting point in such a situation was that binding payment from A to N had been made. However, that did not rule out that it could be proved that payment of too large an amount was made by mistake. A number of actual facts were emphasized, and the court was satisfied that one of the payments was erroneously accepted in the sum of DKK 10,500 instead of DKK 105. N was therefore ordered to pay back the difference.

As a starting point, when the appellant entered his PIN and approved an amount in the sum of DKK 10,500, the appellant made a binding payment to the respondent. However, that does not rule out that it can be proved that payment of too large an amount was made by mistake.

On the evidence, it is held to be established that the appellant, Jens Christian Grøndahl, and Veronica Kjær arrived at Gøglerbaaden in the early hours of 3 May 1997, that the appellant twice fetched and paid for beverages for all three of them, and that they left Gøglerbaaden together, after which Grøndahl and the appellant continued to Slotshotellet, where they parted. On the evidence, there is no basis for assuming that the appellant visited Gøglerbaaden after having said goodbye to Jens Christian Grøndahl.

From the appellant's statement of account dated 13 May 1997, it appears that on 6 May 1997 two debit card purchases were entered at the respondent's premises - as item no 81 (DKK 10,500) and item no 82 (DKK 200). Having regard to the numbering of these amounts, it is held to be established that the appellant's debit card purchase no 81 was made before no 82, so that when the appellant made the first payment for the beverages for Veronica Kjær, Jens Christian Grøndahl and himself, the appellant accepted the payment of DKK 10,500. In view of the size of the amount, the appellant's subsequent payments with his debit card, including the payment of DKK 200 at Gøglerbaaden, and the fact that the most expensive item sold at the restaurant on the night in question cost DKK 1,700, it seems inconceivable

that the appellant had purchased goods for DKK 10,500 or had the difference paid out after the purchase of goods. Thus, the appellant has satisfied the court that his authorisation of DKK 10,500 was due to an error, and the appellant's claim that the respondent is to pay DKK 10,395 plus statutory interest from 28 October 1998 is hereby allowed.

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